



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2020-0088; FRL-10011-00-Region 9]

Air Plan Revisions; California; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to delete various local rules from the California State Implementation Plan (SIP) that were approved in error. These rules include general nuisance provisions, Federal New Source Performance Standards or National Emission Standards for Hazardous Air Pollutant requirements, hearing board procedures, variance provisions, and local fee provisions. The EPA has determined that the continued presence of these rules in the SIP is potentially confusing and thus problematic for affected sources, the State, local agencies, and the EPA. The intended effect is to delete these rules to make the SIP consistent with the Clean Air Act. The EPA is also taking final action to make certain other corrections to address errors made in previous actions taken by the EPA on California SIP revisions are finalized.

DATES: This rule will be effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA-R09-OAR-2020-0088. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g.,

Confidential Business information or other information whose disclosure is restricted by statute.

Certain other materials, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, Rules Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3073, gong.kevin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. Proposed Action

On April 22, 2020 (85 FR 22384), pursuant to section 110(k)(6) of the Clean Air Act (CAA or “Act”), the EPA proposed to delete various local rules from the California State Implementation Plan (SIP) that were approved in error. These rules include general nuisance provisions, Federal New Source Performance Standards or National Emission Standards for Hazardous Air Pollutant requirements, hearing board procedures, variance provisions, and local fee provisions. The EPA proposed to delete the rules based on the Agency’s determination that the rules were approved in error and that the continued presence of these rules in the SIP is

potentially confusing and thus problematic for affected sources, the State, local agencies, and the EPA. Table 1 in the proposed rule lists the specific rules that were proposed for deletion.¹

In our April 22, 2020 proposed rule, the EPA also proposed to make certain other corrections to address errors made in previous actions taken by the EPA on California SIP revisions.² One such correction includes the reinstatement in the applicable SIP of the following rules that were previously incorporated by reference but that were erroneously deleted: San Diego County APCD Rule 67.0 “Architectural Coatings” (adopted on December 4, 1990 and submitted to the EPA on May 13, 1991), and Tuolumne County APCD Rule 516 “Upset and Breakdown Conditions” (excluding paragraph (C) (adopted on September 8, 1981 and submitted to the EPA on October 23, 1981). Other types of corrections include deletion of rules that were previously deleted but for which the deletion was not codified, and other revisions to address errors in amendatory instructions and publishing errors and to clarify the documents that were previously approved.

In our proposed rule, we also proposed to codify the approval of (and incorporate by reference) the following rules that were previously approved but inadvertently not incorporated by reference: San Diego County APCD Rule 20.1 “Definitions” (submitted to the EPA on January 28, 1981) and Yolo-Solano Rules 3.4.1 “Standards for Granting Applications” and 3.4.2 “Conditional Approval” (both submitted to the EPA on February 25, 1980). We are deferring the codification (and incorporation by reference) of San Diego County APCD Rule 20.1 and Yolo-Solano APCD Rules 3.4.1 and 3.4.2 due to the difficulties in preparing the hard copy documents

¹ See 85 FR 22384, at 22385-22387.

² See 85 FR 22384, at 22388-22391.

that are necessary for transmittal to the Office of the Federal Register, for the purposes of incorporation by reference, while shelter-in-place orders remain in effect where Region IX offices and employees are located. We note that the versions of San Diego County APCD Rule 20.1 and Yolo-Solano APCD Rules 3.4.1 and 3.4.2 discussed in this paragraph have been superseded by the EPA's approval of further amended rules,³ and thus, the San Diego rule and Yolo-Solano AQMD rules are no longer part of the current applicable SIP for their respective portions of the California SIP. We had proposed to codify their approvals to maintain an accurate accounting of the versions of the rules that applied for federal enforcement purposes at different times in the past.

An explanation of the relevant CAA requirements and the rationale for each of the proposed deletions and corrections were provided in the proposed rule and will not be restated here.

II. Public Comments and EPA Responses

The public comment period for the EPA's proposed actions closed on May 22, 2020. The EPA did not receive any public comments.

III. EPA Action

Under CAA section 110(k)(6), the EPA is taking final action to delete the rules listed in Table 1 of the April 22, 2020 proposed rule and any earlier versions of these rules from the

³ Even if the EPA's approval of San Diego County APCD Rule 20.1 ("Definitions"), as submitted on January 28, 1981, had been properly codified, it would have been superseded by the EPA's approval of Rule 20.1 ("New Source Review – General Provisions") at 83 FR 50007 (October 4, 2018). The same is true for Yolo-Solano AQMD's Rules 3.4.1 and 3.4.2. Yolo-Solano AQMD Rule 3.4.1 would have been superseded by the EPA's approval of Rule 3.1 ("General Permit Requirements"), sections 303.2 and 303.3, at 62 FR 36214 (July 7, 1997). Yolo-Solano AQMD Rule 3.4.2 would have been superseded by approval of Rule 3.1 ("General Permit Requirements"), section 402, at 62 FR 36214 (July 7, 1997).

corresponding air pollution control district portions of the California SIP. The EPA is taking this action based on our determination that the rules were previously approved into the applicable California SIP in error. We are also taking final action to make certain other corrections to fix errors in previous rulemakings on California SIP revisions as described in detail in the April 22, 2020 proposed rule and summarized above.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely corrects errors in previous rulemakings on SIP revisions and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this action does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule

may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after the date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 23, 2020.

John Busterud,
Regional Administrator,
Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F - California

2. Section 52.220 is amended by:

- a. Adding paragraphs (b)(2)(vii), (b)(3)(iii), and (b)(4)(iii);
- b. Redesignating paragraph (b)(5)(i) as paragraph (c)(6)(xxiv)(D);
- c. Adding paragraphs (b)(8)(ii), (b)(10)(iii), (b)(11)(iii), (b)(22) through (24), (c)(6)(i)(F), (c)(6)(iv)(D), (c)(6)(vii)(D), (c)(6)(ix)(C), (c)(6)(x)(D), (c)(6)(xii)(D), (c)(6)(xiii)(D), (c)(6)(xiv)(D), and (c)(6)(xviii)(B) and (C);
- d. Revising paragraph (c)(6)(xxiii)(A);
- e. Adding reserved paragraph (c)(6)(xxiii)(B) and paragraph (c)(6)(xxiv)(C);
- f. Removing and reserving paragraphs (c)(21)(vii)(B);
- g. Adding paragraph (c)(24)(iv)(D);
- h. Removing and reserving paragraphs (c)(24)(x)(C), (D), and (E);
- i. Adding paragraphs (c)(25)(i)(G), (c)(25)(iv)(C), (c)(28)(v)(B), and (c)(29)(ii)(C);
- j. Removing and reserving paragraph (c)(29)(v)(B);
- k. Adding paragraphs (c)(32)(iii)(H), (c)(44)(iv)(E), and (c)(52)(v)(D);
- l. Redesignating paragraph (c)(52)(vi)(D) as paragraph (c)(52)(vii)(D);
- m. Removing and reserving paragraphs (c)(52)(xix)(B) and (c)(54)(v)(C);
- n. Adding paragraphs (c)(82) introductory text, (c)(83) introductory text, (c)(83)(i) introductory

text, and (c)(83)(iii) introductory text;

o. Redesignating paragraph (c)(102)(ii)(B) as paragraph (c)(102)(i)(B);

p. Adding reserved paragraph (c)(102)(ii)(B);

q. Revising paragraph (c)(103)(xvii)(B);

r. Adding paragraphs (c)(103)(xvii)(E) and (c)(171)(i)(D)(7);

s. Revising paragraph (c)(172) introductory text;

t. Adding paragraphs (c)(176)(i)(A)(2), (c)(183)(i)(E) introductory text, and (c)(184)(i)(D)(1) and reserved paragraph (c)(184)(i)(D)(2);

u. Redesignating paragraph (c)(214)(i)(C)(3) as paragraph (c)(423)(i)(E)(7);

v. Adding paragraph (c)(241)(i)(C)(4);

w. Redesignating paragraph (c)(307)(i)(C)(3) as paragraph (c)(423)(i)(H)(1);

x. Adding reserved paragraph (c)(423)(i)(H)(2); and

y. Redesignating paragraph (c)(390)(i)(B)(1) as paragraph (c)(389)(i)(B)(5).

The additions and revisions read as follows:

§ 52.220 Identification of plan - in part.

* * *

(b) * * *

(2) * * *

(vii) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Section 51.

(3) * * *

(iii) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted

without replacement, Rule 4:4.

(4) * * *

(iii) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rule 120.

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(8) * * *

(ii) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Regulation VI.

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(10) * * *

(iii) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rule 4.2.

(11) * * *

(iii) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rules 2.5 and 2.6.

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(22) Tulare County Air Pollution Control District.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Sections 507, 508 and 515.

(ii) [Reserved]

(23) San Luis Obispo County Air Pollution Control District.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted

without replacement, Rule 111.

(ii) [Reserved]

(24) Santa Barbara County Air Pollution Control District.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rule 17.

(ii) [Reserved]

(c) * * *

(6) * * *

(i) * * *

(F) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rule 51.

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(iv) * * *

(D) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rules 418 and 419.

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(vii) * * *

(D) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rules 419 and 420.

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(ix) * * *

(C) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now

deleted without replacement, Rules 418 and 419.

(x) * * *

(D) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rules 418 and 419.

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(xii) * * *

(D) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rules 418 and 419.

(xiii) * * *

(D) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rule 419.

(xiv) * * *

(D) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rule 419.

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(xviii) * * *

(B) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rule 45.

(C) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rules 100, 101, and 102.

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(xxiii) * * *

(A) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rule 2.17 and 2.19.

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(xxiv) * * *

(C) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rule 51.

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(24) * * *

(iv) * * *

(D) Previously approved on May 18, 1977 in paragraph (c)(24)(iv)(A) of this section and now deleted without replacement, Rules 418 and 505.

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(25) * * *

(i) * * *

(G) Previously approved on August 22, 1977 in paragraph (c)(25)(i)(A) of this section and now deleted without replacement, Rule 111.

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(iv) * * *

(C) Previously approved on August 22, 1977 in paragraph (c)(25)(iv)(A) of this section and now deleted without replacement, Rule 420.

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(28) * * *

(v) * * *

(B) Previously approved on August 22, 1977 in paragraph (c)(28)(v)(A) of this section and now deleted without replacement, Rule 205.

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(29) * * *

(ii) * * *

(C) Previously approved on June 2, 1977 in paragraph (c)(29)(ii)(B) of this section and now deleted without replacement, Rules 112 and 113.

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(32) * * *

(iii) * * *

(H) Previously approved on June 14, 1978 in paragraph (c)(32)(iii)(C) of this section and now deleted without replacement, Rule 511.

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(44) * * *

(iv) * * *

(E) Previously approved on January 29, 1979 in paragraph (c)(44)(iv)(A) of this section and now deleted without replacement, Rule 5.1.

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(52) * * *

(v) * * *

(D) Previously approved on December 9, 1981 in paragraph (c)(52)(v)(B) of this section and

now deleted without replacement, Rule 511.

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(82) Revised regulations for the following APCD submitted on May 1, 1980, by the Governor's designee.

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(83) Revised regulations for the following APCDs submitted on May 13, 1980, by the Governor's designee.

(i) Bay Area Air Quality Management District.

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(iii) Fresno County Air Pollution Control District.

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(103) * * *

(xvii) * * *

(B) Previously approved on May 27, 1982 in paragraph (c)(103)(xvii)(A) of this section and now deleted without replacement, Rule 516 (paragraph (C)).

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(E) Previously approved on May 27, 1982 in paragraph (c)(103)(xvii)(A) of this section and now deleted without replacement, Rules 703 and 710.

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(171) * * *

(i) * * *

(D) * * *

(7) Previously approved on April 12, 1989 in paragraph (c)(171)(i)(D)(*I*) of this section and now deleted without replacement, Rule 4:2.

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(172) Revised regulations for the following APCD's were submitted on March 18, 1987, by the Governor's designee.

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(176) * * *

(i) * * *

(A) * * *

(2) Previously approved on October 23, 1989 in paragraph (c)(176)(i)(A)(*I*) of this section and now deleted without replacement, Rule 4.2-1.

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(183) * * *

(i) * * *

(E) Santa Barbara County Air Pollution Control District.

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(184) * * *

(i) * * *

(D) * * *

(*I*) Rule 67.0, adopted on December 4, 1990.

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(241) * * *

(i) * * *

(C) * * *

(4) Previously approved on July 21, 2000 in paragraph (c)(241)(i)(C)(2) of this section and now deleted without replacement, Rule 74.6.3.

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[FR Doc. 2020-13997 Filed: 7/14/2020 8:45 am; Publication Date: 7/15/2020]